

**IN THE HIGH COURT OF BOMBAY AT GOA**

CRIMINAL MISC. APPLICATION NO. 113 OF 2006

COUTINHO AND ASSOCIATES AND ANR., ....Applicants

Versus

PAN CONSTRUCTIONS, MARGAO GOA. ....Respondent

Mr. Zeller De Souza, Advocate for the Applicants.

Mr. Joaquim Godinho, Advocate for Respondent.

Coram:- N. A. BRITTO, J.

Date:- 18th March, 2006

P.C.

Heard Shri D' Souza, the learned Counsel on behalf of the applicant/accused in C.C.no.435/OA/NI/2003/C and learned Advocate Shri Godinho on behalf of the respondent/Complainant.

2. It appears that on 11.08.2005, on behalf of the applicant/accused, an application was filed for summoning a witness for the defence and the same was allowed by the learned J.M.F.C. stipulating that summons to the witness was to be issued and Batta charges were to be paid by the accused and the case was fixed on 25.11.2005. Although, on behalf of the accused process fee was paid on 21.10.2005, Batta charges remained to be paid and, as on 25.11.2005, no defence witness was present. The learned J.M.F.C., closed the defence case and fixed the case for final arguments. It appears that another application was made on behalf of the accused on 28.11.2005 for recalling of the said Order dated 25.11.2005 of the learned J.M.F.C., but this application came to be rejected by Order dated 21.12.2005. The contention raised on behalf of the accused appears to be that in the Order dated 11.08.2005, the learned J.M.F.C. had not made that the deposit of Batta charges as a pre-condition for summoning the said

defence witness in as much as the amount of Batta charges was also not specified. Shri D'Souza, the learned Counsel on behalf of the applicant/accused submits that the Batta charges to summon a witness, are to be fixed by the Court. Shri Godinho, on behalf of the Complainant has referred to sub-section (3) of Section 454 and has submitted that the accused was certainly required to pay expenses of the witness who was summoned to attend the Court. It is not the case of the accused that after the said Order dated 11.08.2005, the accused had made any effort to approach the learned J.M.F.C. and get the Batta charges fixed, assuming for a moment, that the Batta charges could be fixed only by the Presiding Officer of the Court and not otherwise. There has certainly been inaction on behalf of the accused in obtaining an Order from the Court in fixing the Batta charges before summon could be issued to the witness. Nevertheless, the said inaction would be insufficient to deprive the accused from examining the said witness, sought to be summoned by him, in support of the defence. This would be a fit case to impose cost on the accused and allow the accused to examine the said witness, sought to be summoned by him, pursuant to application dated 11.08.2005. Consequently, the impugned Orders of the learned J.M.F.C., are hereby set aside and the application dated 11.08.2005, filed by the accused is allowed, subject to the payment of the cost of Rs.1,000/- by the accused to the Complainant, which is now made as a condition precedent for issuance of the said summon. The learned J.M.F.C. is directed to fix the Batta charges forthwith.

N. A. BRITTO, J.

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